

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN RAUM A/K/A ALAN
DEMETRIUS RAUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50271

FILED

MAY 20 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Alan Raum to serve a prison term of 24 to 72 months.

First, Raum contends that trial counsel provided ineffective assistance by informing the jury that he had a prior drug conviction and was on probation.

As a general rule, we will not consider claims of ineffective assistance of counsel on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.¹ However, such claims may be appropriate for direct appeal if the defendant has demonstrated that the error is undisputed, apparent from

¹See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

the record, and purely a matter of law,² or if the error was “improper per se,” such that an evidentiary hearing to establish counsel’s strategic or tactical motivations would be unnecessary.³

Here, Raum claims that nothing in the record indicates that he approved of defense counsel’s strategy and understood its ramifications. And he argues that his subsequent statement to the district court, that he agreed with the defense that his attorney presented to the jury, did not remedy the inherent violation. We conclude that Raum has failed to demonstrate that we should depart from the general rule in his case.

Second, Raum contends that he was denied a fair trial due to prosecutorial misconduct. Raum claims that the prosecutor engaged in misconduct by stating that defense counsel “will try to confuse the issue,” and that the district court erred by failing “to declare a mistrial or take any other curative steps.”

District courts have a duty to ensure that criminal defendants receive a fair trial.⁴ “In determining whether prosecutorial misconduct has deprived a defendant of a fair trial, we inquire as to whether the prosecutor’s statements so infected the proceedings with unfairness as to make the results a denial of due process.”⁵

²Id.

³Jones v. State, 110 Nev. 730, 737, 877 P.2d 1052, 1056 (1994).

⁴Collier v. State, 101 Nev. 473, 477, 705 P.2d 1126, 1128 (1985), modified on other grounds by Howard v. State, 106 Nev. 713, 800 P.2d 175 (1990).

⁵Rudin v. State, 120 Nev. 121, 136, 86 P.3d 572, 582 (2004) (internal quotation marks omitted).

We have considered the prosecutor's comment in context and we conclude that it did not deprive Raum of a fair trial.

Having concluded that Raum's contentions are either not cognizable on direct appeal or without merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk